

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GREGORY A. HENDERSON)	
Claimant)	
VS.)	
)	Docket Nos. 190,340 & 190,341
BOEING MILITARY AIRPLANES)	
Respondent)	
AND)	
)	
KEMPER INSURANCE COMPANIES)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

On the 22nd day of November, 1994, the application of the claimant for review by the Workers Compensation Appeals Board of an Order entered by Administrative Law Judge John D. Clark on August 31, 1994, came on before the Appeals Board for argument by telephone conference.

APPEARANCES

Claimant appeared by and through his attorney James B. Zongker of Wichita, Kansas. The respondent and insurance carrier appeared by and through their attorney Vaughn Burkholder of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, Kurt Ratzlaff of Wichita, Kansas. There were no other appearances.

RECORD

The record before the Appeals Board consists of the documents filed of record with the Division in this docketed matter, including the transcript of Preliminary Hearing before Administrative Law Judge John D. Clark dated August 30, 1994, with the exhibits attached thereto.

ISSUES

- (1) Did claimant meet with accidental injury arising out of and in the course of his employment to his right elbow, neck and shoulders during the period December 1993 through January 21, 1994, as alleged in Docket No. 190,340, and to his right hand, specifically his right thumb and right ring finger, during the period March 1994 through May 9, 1994, as alleged in Docket No. 190,341?
- (2) Shall Doctors Salone and Gluck be the authorized treating physicians for claimant for purpose of the above-described injuries?
- (3) Is claimant entitled to temporary total disability compensation for the above-described injuries?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purpose of Preliminary Hearing, the Appeals Board finds:

Claimant has failed to prove by a preponderance of the credible evidence that he suffered accidental injury arising out of and in the course of his employment with the respondent to his right elbow, neck and shoulders during the period December 1993 through January 21, 1994, and to his right hand, specifically his right thumb and ring finger, during the period March 1994 through May 9, 1994.

Claimant attempts to attribute his problems to activities at work involving lifting a computer monitor from a four-foot shelf and placing it on a two-foot shelf on several instances over the course of approximately a one-month period. Claimant attributed his right hand injuries to clerical activities at his office, including using a computer mouse and maneuvering around his desk in his chair, reaching for telephones and radio buttons.

These physical activities appear to be considerably less strenuous than the non-work activities displayed by claimant on a video tape admitted into evidence by the respondent. Claimant had been asked on several occasions during his testimony about his bowling activities. During the Preliminary Hearing claimant testified that he had severely limited his bowling activities due to these physical problems. Claimant further testified that he was incapable of, and had not bowled, two days in a row during 1994. The respondent placed into evidence a video tape showing claimant bowling the evening of April 29 and the afternoon of April 30, 1994. A careful review of the video tape indicated claimant's non-work physical activities were not only considerably more strenuous than those described by claimant at work but also indicated claimant was considerably less

physically limited than he led the court to believe. K.S.A. 44-501 and K.S.A. 44-508(g) make it the claimant's burden to prove his entitlement to an award by proving all of the various conditions on which the claimant's right depends by preponderance of the credible evidence.

Based upon a review of the entire record, it is the Appeals Board's decision that claimant has not proven by a preponderance of the credible evidence that he has suffered the injuries alleged.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark, dated August 31, 1994, denying benefits to the claimant and setting aside the Court's earlier Order of August 30, 1994, is affirmed.

IT IS SO ORDERED.

Dated this ____ day of February, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James B. Zongker, Attorney at Law, Wichita, KS
Vaughn Burkholder, Attorney at Law, Wichita, KS
Kurt Ratzlaff, Attorney at Law, Wichita, KS
John D. Clark, Administrative Law Judge
George Gomez, Director